



JUSTICE UPDATE

Period: 25 – 28 January 2005
Issue 4/2005

BAUCAU DISTRICT COURT

1. CURRENT PROBLEMS IN THE BAUCAU DISTRICT COURT

1.1 The absence of international judges

Since it recommenced its operations in November 2004, the Baucau District Court has been open each day from 08:00 until 17:00. However, the international judges who are currently in charge of processing criminal cases are only available to hear cases in Baucau twice a week (on Wednesdays and Thursdays). Schedules for hearings and trials are established in line with the number of international judges responsible for the cases currently before the court.

JSMP has been monitoring cases on a regular basis in Baucau since November 2004 and has observed that there have been continuous postponements and the court has not observed the timetable established for hearings and trials. Hearings are often adjourned and the international judges often do not appear on the alternative dates. Hearings in the Baucau District Court are often postponed because the international judges reside in Dili and often arrive late at the Baucau District Court. As a result the scheduled cases have to be adjourned or even cancelled. JSMP was also informed by the families of victims and suspects at the Baucau District Courthouse that they often have to wait for lengthy periods of time and sometimes have to return to their sub-districts (that are some distance from Baucau) without their case having been heard.

JSMP recognises that the four international judges (including the two judges responsible for Baucau) are not only busy with their court commitments in Dili and the district courts, but are also working as trainers at least for half a day a week each, at the Judicial Training Centre (JTC). Now that the twenty two East Timorese judges can no longer work in the courts, it is clearly going to be difficult for the four international judges to work through the backlog of more than one thousand cases and also work as trainers at the JTC.

1.2 72 hour review hearings at the Baucau District Court

JSMP also was able to observe the frequency of review hearings on detentions and arrests carried out by the police investigators in Baucau. During the aforementioned observation period, JSMP detected serious problems with the 72 hour review of arrest and detention. There are concerns that very few hearings are being held on

time, which has resulted in detentions and arrests exceeding the time limit established by UNTAET Regulation 2000/30 as amended by 2001/25 on the Transitional Rules of Criminal Procedure.

JSMP received information from the Baucau Police Investigation Unit that suspects detained for 72 hours, who are sometimes arrested without a warrant from the investigating judge, have had to be released by police investigators as the time limit for their detention has expired. Police investigators have made attempts to take these cases to the Dili District Court before the 72 time limit expires, but this is problematic. Another problem is the difficulty of obtaining an arrest warrant from the international judges, as they do not reside in Baucau, which further exacerbates the problems of the Baucau District Court. The Samalari case which occurred in November 2004, the assault against the *Makadiki oan* bus, a case of maltreatment that occurred on 23 January 2005 in Viqueque are examples of cases that were unable to comply with established timetables or unable to be processed in accordance with UNTAET Regulation 2000/30 as amended by 2001/25.

Once again, these problems were caused by the fact that international judges were only present in the Baucau District Court on Wednesdays and Thursdays, meaning that it was difficult to bring suspects before hearings when those suspects were detained and arrested on Fridays and Saturdays.

1.3 Problems relating to main trials

JSMP observed that there was a case of maltreatment which in fact had been heard in October 2001, and the perpetrator had been granted conditional release with the requirement he present himself to authorities on a monthly basis. This case had been handled by a national judge and was near completion, all that remained to be done was the delivery of the final verdict. However when the international judge took control of this case it was delayed on numerous occasions as the international judge requested the prosecutor to summon witnesses to a trial hearing in order to hear their testimony. However, the summoned witnesses had in fact already attended a hearing last year and provided their testimony. The defence in this case has informed JSMP that the victim and the suspect had reached a peaceful settlement at the time the national judge adjourned the case to consider a final verdict. In JSMP's opinion, resolving cases such as these will be problematic.

JSMP believes that on one hand the decision of the international judge to continue the trial of the aforementioned case is justifiable, as Section 75 of the Indonesian Penal Code states "*the person who files the complaint remains competent to withdraw the complaint during three months after the filing date*", and the processing of this case has indeed exceeded three months and all that is left is a final verdict. On the other hand, this case had reached the last stage where a final verdict was to be delivered, and it is unjustifiable to continue hearing this case by summoning witnesses who have already given testimony, including presenting evidence to the court for the second time. This case had reached the final stage and was awaiting a final verdict, and this final verdict should have been announced by now!

1.4 Civil Cases in the Baucau District Court

JSMP obtained information from the civil registry section that in 2003 approximately 14 civil cases were registered and some of these cases were in progress. When JSMP visited the Baucau District Court at the end of January 2005, the international judges were yet to conduct any hearings in civil cases that had been registered or partially processed.

JSMP is aware that the Indonesian Civil Code and the Indonesian Criminal Procedure Code which are currently applicable in Timor Leste may pose some problems for the international judges wishing to apply these laws, and the limited number of international judges to hear these cases may make it difficult to conduct hearings in civil cases. JSMP is aware that there are a significant amount of criminal cases currently being processed and that such a task requires the presence of as many judges as possible. (Currently two international judges have been appointed to handle all of the cases before the Baucau District Court.)

2. CASE NO. 10-05-04: PROSECUTION ASKS THE COURT TO SET AN EXAMPLE IN SPOUSAL MALTREATMENT CASE

On 26 January 2005, the trial of Case No. 10/05/04 took place in Baucau District Court before international judge Joana Vaz. The accused is facing charges of aggravated maltreatment under Article 356 of the KUHP (Indonesian Penal Code) for having attacked his wife with a machete in August 2003.

After being in pre-trial detention for three months, this restrictive measure was reviewed. According to that order, the accused was prohibited from leaving Baucau District until the end of the trial.

At the beginning of the trial, the victim stated that the events occurred as portrayed in photographs that were showed to her by the Court. During her testimony, the victim also showed the Court deep scars (in neck, chest, stomach and right leg) which resulted from the attack.

During the questioning, she recognized one photograph of her son's injury who was on her lap while the crime was committed. The Judge, turned to the Prosecution, and mentioned this fact saying that "the accused was charged only with one crime when he committed two". The judge also stated that the police report mentioned a child, but not the indictment. According to the mother's statement, the attack didn't cause any serious or permanent physical injury to the child (who was one year and three months at the time the crime was committed).

The Prosecution could have, at this stage of the judicial process, prior to the final decision in the case, requested court authorization to amend the indictment (section 32.2 UNTAET Regulation 2000/30) because the evidence at trial established that besides the crime that was described in the indictment a second crime was committed. This was not requested by the Prosecution, although evidence relating to the second crime was presented before the court (photograph of the injuries and the mother's testimony). Therefore, the court can not consider the crime against the child

in the final decision because it must limit itself to ruling on what is stated in the indictment.

During the final arguments, the Defence reminded the court of an agreement which was established between the Parties. According to this agreement the accused admitted to having attacked his wife and his son, presented public apologies and gave five buffalos to the victim's family as indemnity for physical and psychological damages. The victim stated before the court that she already forgave the defendant and that no longer had any interest in the arrest of the accused or even in allowing the process to continue.

The Prosecution declared (considering what was said previously) that it would consider whether or not to prosecute the accused for the attack against the minor. Relating to the crime against the spouse of the accused, the Prosecution recognized that both compensation and public apologies represented a personal effort of the accused to be socially reintegrated (and that could contribute in some way to the community rehabilitation of the defendant), and emphasized the importance of this aspect as a special element to the mitigation of the penalty, but still "it is not enough", said the Prosecution. The Prosecution stated that the following aggravating factors should be taken in account in the judge's final decision: the seriousness of the offence; the means used to perpetrate it; the vital body parts damaged due to the attack (from which could have resulted in death); the deep scars which physically disfigured the victim; and the relationship between the Parties. The Prosecution said the accused should be found guilty and that the court should set a strong example with this case by sentencing the accused to an imprisonment penalty higher than the average penalty prescribed by law. because "people should be aware through this sentence that this kind of behaviour cannot take place anymore".

The reading of the sentence was scheduled for 09 February.